

**MINUTES**  
**Montana Fish, Wildlife & Parks**  
**Commission Conference Call Meeting**  
**1420 East 6<sup>th</sup> Avenue – Helena Headquarters - Helena, MT 59620**

**FEBRUARY 24, 2010**

**Commission Members Present:** Shane Colton, Chairman; Dan Vermillion, Vice-Chairman; Bob Ream, Ron Moody, Willie Doll.

**Fish, Wildlife & Parks Staff Present:** Director Joe Maurier, Art Noonan, Jim Kropp, Bruce Rich, Bill Schenk. Pat Saffel, Regena Peterson.

**Guest Present:** Ryne Dougherty

**Topics of Discussion:**

- 1. Opening – Call to Order**
- 2. Georgetown Lake Fishing Contest Appeal by Anaconda Sportsmen's Club and Skyline Sportsmen's Association**

**1. Call to Order.** Chairman Colton called the Commission conference call meeting to order at 11:30 am.

**2. Georgetown Lake Fishing Derby Appeal by Anaconda Sportsmen's Club and Skyline Sportsmen's Association.** The clubs oppose fishing contests and have based their appeal on the following: 12.7.805 *An application may be denied if in the opinion of the department any of the following are found to exist: (a) the contest will have detrimental impacts on fish populations, the aquatic ecosystem or the surrounding area. (e) there is significant public opposition to the proposed contest based on biological or recreational conflict concerns. Public comments will be provided to the sponsor on request.*

Chairman Colton asked Pat Saffel, FWP Region 2 Fisheries Manager, to brief the Commission on the situation, and describe what the Department approved within the application.

Saffel explained that the Department accepts and considers fishing contest applications for summer contests, for winter contests, and for charity benefit events. This particular application falls under the benefit category. The application, submitted by Ryne Dougherty, was received by FWP on January 22, 2010, and requested approval of a two-day salmon fishing event on Georgetown Lake to raise funds for people in Africa. The application was approved, with stipulations, following review of data on Georgetown Lake, and following a public comment period. Stipulations to the application included: catch and immediate release of all fish except salmon, no more than 100 participants per day, marshalls must be present, no use of FWP land, permits must be obtained for any use of USFS land, a maximum harvest of 10 kokanee salmon by any one contestant with no culling allowed, all contestants must be identifiable, contestants must accommodate FWP staff in collecting catch statistics, and the sponsor must provide for the proper processing and donation of fish to food banks. Marshalls provided by the sponsor will be monitoring the contest as will FWP enforcement staff.

Saffel explained that Mr. Dougherty acquired a Forest Service permit and insurance, and contacted the Lewis & Clark County Health Department on proper handling of the fish for distribution to the Helena Food Share and the Butte Food Bank who have agreed to take any fish. The public comment period began January 24 and ended February 16. Thirty-seven comments were received with twenty-eight in favor, six opposed, and three who were not specific either way. There is no harvest limit for kokanee salmon on Georgetown Lake. Data suggests that the populations are stable and abundant, therefore this contest will not impact the population. The salmon spawn naturally on this lake.

Vermillion asked Saffel to address the appellants' statement that it took a year for the lake to recover from a fishing derby that was held thirty years ago, and the further claim that this contest would be a detriment to the fishery.

Saffel said FWP disagrees that the contest would be detrimental to the lake, and stated that the Department has no data on a derby held thirty years ago.

Moody asked how many fishing contests are allowed on Georgetown Lake each year. He asked if FWP predicts biological harm since opposing comments suggest there will be.

Saffel said there may have been one contest in the distance past, but there have not been many applications. FWP feels two hundred contestants distributed equally over two days is socially acceptable, and will not create biological harm to the lake.

Vermillion asked if the Department felt the rules were abided by.

Bill Schenk, FWP Legal Counsel, said he is not aware of any prior appeals of fishing contests, and that the regional staff did everything appropriate to deal with the application's merits quickly and thoroughly, as well as provided an adequate comment period. There are not many circumstances where the comment period goes beyond three weeks.

Saffel noted that that this is the first appeal FWP has received on fishing contests.

Ream said that in the future there must be a period of sixty days from the time when the application is approved until the event occurs. There is a twenty-day period for filing appeals, and special meetings of the Commission should not have to be held to deal with this kind of situation. He felt the rules have been bent. Normally, applications are due by July 1 and November 1, however 12.7.802 reads that applications may be accepted later than November 1 *for benefit fundraising contests*. He said the rules need to be modified. It must be made clear that it is not acceptable to deal with this at the last minute.

Tony Schoonen, Anaconda Sportsmen's Club, asked for clarification on rule 12.7.805 regarding Department decisions. It says the department will issue a decision no later than October 1 for ice fishing, but it doesn't say it can be extended.

Schenk said there is a weakness in the rules, as 12.7.80 says FWP will issue a decision regarding ice fishing contests no later than October 1, however, 12.7.802 says applications for benefit fundraising may be received later. But that is the application, not the decision.

Schoonen felt the decision should have been made in October rather than January, as that does not allow much time for comments. He said this violates the public trust doctrine. It took a long time for fish to recover thirty years ago. Non-target species are in the lake. He said their comments cannot be counted as only one because there are 500 members in the two clubs. It is known that they are always against contests, so they should have been contacted before it was approved.

Ryan Dougherty, applicant, said the intention of the contest is to raise money to help people in Africa. He anticipates they will fill the permit with 100 fishermen each day. He traveled around the lake inquiring about contest interest and about the catch rate along lake. Feedback was positive. He spent time in Africa doing various fundraising events, and feels an ice fishing derby would be a good fund raiser. The money will be used to construct fences around their new well to keep livestock out, and will buy textbooks for their new school.

Colton stated that it is a noble cause, but the Commission must make a decision based on process. The legislature has authorized the Commission to entertain these applications.

*Action: Moody moved to sustain the appeal and disallow the application for the fishing contest as applications should be in by October 1. The motion failed due to lack of a second.*

Ream asked Dougherty if there is a fee involved, and if prizes are to be awarded.

Dougherty said the contest has been advertised as *Jigging at Georgetown*. Donated prizes are to be awarded for the most pounds of salmon per team per day, for the largest salmon by length, etc. They plan to ask for donations in lieu of an entry fee.

*Action: Ream moved and Doll seconded the motion to deny the appeal by the Anaconda Sportsmen's Club and the Skyline Sportsmen's Association and proceed with the fishing derby.*

Moody said the Commission is making an exception where an exception is not necessary. The Commission has authority, but this is not a judicious use of the authority.

Ream stated that 12.8.807 gives latitude to override the other rules.

*Action on Motion: Motion carried - one opposed (Moody)..*

Colton asked the Department to address the rules – there is a clause in the rule that has never been interpreted before, and is not efficient in its administration.

*Action: Doll moved and Ream seconded the motion to adjourn the conference call meeting. Motion carried.*

Meeting adjourned at 12:15p.m.

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**Shane Colton, Chairman**

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**Joe Maurier, Director**

**12.7.805 Department Decision.** (1) The department will issue a decision regarding applications no later than February 1 for open water contests or October 1 for ice-fishing contests. The department may approve an application as submitted, approve an application with modifications or deny an application. When an application is approved with modifications, the applicant must respond to the department within 20 days of receipt of the department's written decision if the modifications are unacceptable. Failure to do so will constitute acceptance of the decision.

(2) An application may be denied if in the opinion of the department any of the following are found to exist:

- (a) the contest will have detrimental impacts on fish populations, the aquatic ecosystem or the surrounding area;
- (b) the contest would conflict with management goals for the host water;
- (c) the contest conflicts with other proposed contests or intended uses of the host water;
- (d) the proposed contest would be held during a period of heavy recreational use on the host body of water, increasing the likelihood of conflicts with other users; and
- (e) there is significant public opposition to the proposed contest based on biological or recreational conflict concerns.

Public comments will be provided to the sponsor on request.

(3) Conditions may be placed on contests to:

- (a) minimize fish mortality in catch and release contests;
- (b) regulate harvest;
- (c) reduce user conflicts; or
- (d) require supplemental trash removal, restroom facilities, or other maintenance at department access sites when routine facilities and maintenance are inadequate for the contest.

(4) Contests may not be scheduled and approved for consecutive weekends on any body of water less than 100,000 surface acres in size.

(5) Contests may not be scheduled on holiday weekends, including but not limited to Memorial Day, Fourth of July and Labor Day.

(6) The department will notify the applicant of its decision by mail. The department shall notify the public with an announcement released to all major state newspapers and through notice published on the department website.

**87-3-121. Conditions for award of prizes.** (1) It shall be unlawful for any person, firm, corporation, association, or club to offer or give any prize, gift, or anything of value in connection with or as a bag limit prize for the taking, capturing, killing, or in any manner acquiring any game, fowl, fur-bearing animals, or any bird or animal now or that shall be hereafter protected in any way by the fish and game laws of the state of Montana.

(2) The commission shall adopt rules to regulate contests by a person, firm, corporation, association, or club that intends to offer or give a prize, gift, or anything of value in connection with or as a prize for the taking, capturing, killing, or in any manner acquiring fish that are protected under Title 87. The commission's rules must be based on the commission's duty under Title 87 to protect, preserve, and propagate fish in the state.

(3) This section shall not be construed to prohibit the award of prizes for any one game bird or fur-bearing animal on the basis of size, quality, or rarity.

#### **12.7.802. Application**

(1) Any individual, club, organization or business wishing to sponsor a fishing contest on a body of water open to public fishing must submit an application to the department of fish, wildlife and parks as specified in this rule.

(2) Applications must be submitted between September 1 and November 1 for open water contests proposed for the following March 1 through December 1;

(a) applications for benefit fundraising contests received later than November 1 may be accepted.

(3) Applications must be submitted between May 1 and July 1 for ice fishing contests proposed for the following December 1 through March 1;

(a) applications for benefit fundraising contests received later than July 1 may be accepted.

(4) Contest sponsors must provide documentation that they have approval to use each fishing access site not under the ownership or control of the department that is listed in the application.

(5) Contest sponsors are responsible for notifying participants of any public safety concerns associated with the contest.

(6) Contest sponsors are responsible for notifying participants that boats and trailers must be cleaned before and after the contest to prevent transport and introduction of aquatic nuisance species.